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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/709,234	11/09/2000	Jeffrey R. Boulter	85804-019401 (00-8832)	3098

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EXAMINER

LEZAK, ARRIENNE M

ART UNIT PAPER NUMBER

2143

DATE MAILED: 02/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/709,234

Applicant(s)

BOULTER ET AL.

Examiner

Arrienne M. Lezak

Art Unit

2143

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 01/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Examiner notes that no Claims have been amended, added or cancelled. All Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 1 July 2005 as reiterated herein below.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of US Patent 5,996,015 to Day in view of US Patent US 6,192,340 B1 to Abecassis.

3. Regarding Claims 1, 11, 12, 21, 24, 35, 36 & 46, Day discloses a method, system and interface for broadcasting data streams through a computer network, (including, but not limited to, the Internet - per pending Claims 12 & 36), to a user's computer, (Abstract; Fig. 1; and Col. 3, lines 27-28), comprising:

- providing a database of data streams available to said computer network, (Col. 5, lines 24-38);
- selecting a data stream according to a selection method, (Col. 5, lines 7-19);

- transmitting one of said data streams to the user's computer via a data stream controller and user interface including a media player, (Col. 5, lines 7-19);
- receiving feedback expressing a preference from the user regarding said transmitted data stream via a user interface which includes a data stream information display, (Col. 5, lines 7-22); and
- updating said selection method, modifying its selection of data streams for transmission to better reflect said preference of the user, (Col. 5, lines 7-29); whereby
- data streams transmitted to the user are biased according to said preference, (Col. 5, lines 7-52).

4. Though Day discloses a database of data streams, Day does not specifically indicate that the selection of a data stream is from said database. Additionally, though Day discloses a biasing functionality based on user preference, Day does not specifically indicate the direct use of user preference for rating data. Abecassis discloses a virtual audio library, which library is a database of information relating to audio items, and which database may also serve the object of establishing and maintaining user preferences, (Col. 14, lines 35-67 & Cols. 15-17). It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to incorporate the database selection means of Abecassis into the Day multimedia device as noted within Abecassis. Specifically, Abecassis teaches that apparatuses for integrating audio items responsive to user preferences, (Col. 3, lines 8-11), include

"multimedia players", which multimedia players include a set-top box capable of retrieving video-on-demand services from a remote video service provider, (Col. 5, lines 66-67 & Col. 5, lines 1-24). Moreover, Examiner notes that Abecassis discloses both "Musicmatch Jukebox" and "RealJukebox", wherein both jukebox software items render obvious Applicant's invention, including data stream display on a media player and establishment of user preferences via a rating means, (Col. 17, lines 56-61). Thus, Claims 1, 11, 12, 21, 24, 35, 36 & 46 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

5. Regarding Claims 2, 17, 18, 22, 25, 41, 42 & 47, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet further comprising:

- generating a transmission list of data streams to transmit to the user's computer, (Day - Col. 5, lines 7-19; Col. 6, lines 26-32; and Col. 9, lines 31-33);
- transmitting one of said listed data streams to the user's computer, (Day - Col. 5, lines 7-19); and
- updating said list of data streams to better reflect said preference of the user, (Day - Col. 5, lines 7-29), (Abecassis - Col. 14, lines 35-67 & Cols. 15-17); whereby
- data streams transmitted to the user are biased according to said preference, (Day - Col. 5, lines 7-52), (Abecassis - Col. 14, lines 35-67 & Cols. 15-17).

Thus, Claims 2, 17, 18, 22, 25, 41, 42 & 47 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

6. Regarding Claims 3 and 26, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet further comprising receiving feedback expressing preferences from sources other than the user, (Day - Col. 1, lines 43-58 and Col. 4, lines 23-64), (Abecassis - Col. 14, lines 35-67 & Cols. 15-17). Thus, Claims 3 and 26 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

7. Regarding Claims 4 and 27, as noted above, Day in view of Abecassis discloses data stream selection from individuals other than the user, including but not limited to, a network administrator, manager or broadcast station, (Day - Col. 1, lines 43-67). Day does not specifically enumerate that the "other users" derive their selection from a list of popular songs. It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to base a data stream selection on the most popular multimedia content available, as to do the opposite would not serve to cultivate an audience. As Day teaches the network distribution of on-demand multimedia, the available content would obviously need to be desired by, and thus popular among users, especially broadcast stations desirous of building an audience. Thus, Claims 4 and 27 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

8. Regarding Claims 5 and 28, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet further

comprising informing the user generally regarding said database and said data streams, querying the user as to data stream preference prior to generating an initial transmission list of data streams, whereby said initial list reflects general preferences of the user, (Day - Col. 5, lines 7-52), (Abecassis - Col. 14, lines 35-67 & Cols. 15-17). Thus, Claims 5 and 28 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

9. Regarding Claims 6, 13, 14, 29, 37 and 38, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein said data streams are selected from the group consisting of songs and videos, (Day - Col. 3, lines 24-26 and Col. 5, lines 58-60), (Abecassis - Col. 14, lines 35-67 & Cols. 15-17). Thus, Claims 6, 13, 14, 29, 37 and 38 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

10. Regarding Claims 7, 8, 30 and 31, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein said transmitted data stream is removed from said transmission list, (per pending Claims 7 and 30), and listed on a transmitted data stream list, (per pending Claims 8 and 31), (Day - Col. 5, lines 7-67 and Col. 6, lines 1-31). Thus, Claims 7, 8, 30 and 31 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

11. Regarding Claims 9, 10, 19, 20, 23, 32, 33, 43, 44 & 48, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein conformance with applicable copyright law applies to all transmitted data streams, (Day - Fig. 1; Fig. 2; and Col. 3, lines 1-32). Examiner notes

that conformance with applicable copyright law inherently applies to all transmissions wherever and whenever they occur, to whomever they are displayed and for whatever they contain. Thus, as Day teaches the transmission of content generally, copyright law is inherently relevant and applicable to the same. Thus, Claims 9, 10, 19, 20, 23, 32, 33, 43, 44 & 48 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

12. Regarding Claims 15, 16, 39 and 40, as noted above, Day in view of Abecassis discloses data stream transmission of multimedia content over the Internet, (Day - Col. 5, lines 7-52). Day does not specifically enumerate the use of a user interface comprising an electronic media player, (per pending Claims 15 and 39), selected from a group consisting of RealPlayer, Apple QuickTime, and Windows Media Player, (per pending Claims 16 and 40). Abecassis discloses electronic media players, including RealPlayer, (Abecassis - Col. 4, lines 30-65). It would have been obvious to one of ordinary skill in the art at the time of invention by Applicant to utilize an electronic media-capable interface within an Internet-capable multimedia distribution system, such as the one disclosed in Day. It would have been equally obvious to use a media player available and capable of multimedia distribution, such as RealPlayer, Apple QuickTime, and Windows Media Player. As Day teaches multimedia distribution over a network, including but not limited to the Internet, the use of an interface capable of such distribution would have been obvious and necessary. Moreover, Thus, Claims 15, 16, 39 and 40 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

13. Regarding Claims 34 and 45, Day in view of Abecassis discloses a method, system and interface for broadcasting data streams through the Internet wherein said updated selection method takes into account all preferences expressed by user, (Day - Col. 5, lines 7-52). Abecassis further discloses the same, (Abecassis - Col. 17, lines 56-61 & Col. 18, lines 55-67). Thus, Claims 34 and 45 are found to be unpatentable over the combined teachings of Day in view of Abecassis.

Response to Arguments

14. Applicant's arguments filed 3 January 2006, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

15. Applicant's arguments regarding Claims 21-23 & 46-48, (rejections under 37 C.F.R. §102(e)), are moot as noted herein above. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Moreover, Examiner notes that all claim limitations, (including data stream rating via user preference), are rendered obvious over the combined teachings of Day and Abecassis. Thus, this obviousness-type

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rejection succeeds, as the cited references in combination do indeed have all the elements recited in Applicant's claims, (and as noted herein), and moreover, the motivation to combine the same is both extremely strong and clearly predates Applicant's application.

16. Regarding Applicant's argument that the prior art does not teach real-time broadcast, Examiner respectfully disagrees again noting that the prior art specifically and clearly incorporates the teachings of RealJukebox and MusicMatch Jukebox, (Col. 4, lines 30-65), in addition to a radio-on-demand functionality, (Col. 11, lines 1-44). Examiner notes that Applicant has mistakenly argued the background of the invention, which background enumerates the need for the incorporation of real-time broadcasts; however, said background is not by any means the Abecassis invention. Additionally, Examiner again notes that regardless of a user's music collection, the radio-on-demand feature, (taught by Abecassis – Col. 11, lines 31-44), in combination with the teachings of RealJukebox and MusicMatch Jukebox, clearly and obviously teach Applicant's claimed invention in its entirety.

17. Thus, as Examiner has completely addressed Applicant's amendment, and finding Applicant's arguments do not show how reconsideration avoids such references or objections, Examiner hereby rejects all claims in their entirety as noted herein above.

18. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action

and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

RealNetworks archived webpages;

Musicmatch archived webpages.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

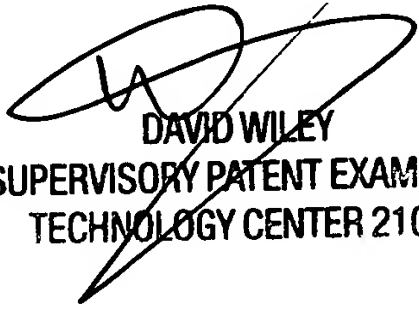
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak
Examiner
Art Unit 2143

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